

State Permit Number: WPCC XXXX/XX

NPDES Permit Number: DE XXXXXXX

Effective Date: TBD

Expiration Date: TBD

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
AND THE LAWS OF THE STATE OF DELAWARE
GENERAL PERMIT FOR STORM WATER DISCHARGES
FROM SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS

In compliance with the provisions of the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987 (33 U.S.C. §§ 1251 et seq.), hereinafter referred to as “the Act”, and pursuant to the provisions of Title 7, Del.C., § 6003, the Delaware Department of Natural Resources and Environmental Control (“the Department”) authorizes the designated small municipal separate storm sewer system (MS4), collectively and severally, as permittees, to discharge storm water from all portions of the municipal separate storm sewer system located in Delaware that are owned, operated or maintained by any of the permittees to waters of the State of Delaware located within the boundaries of the designated MS4 in accordance with the comprehensive storm water pollution prevention and management program, the discharge limitations, monitoring requirements and other provisions set forth in Parts I, II, III, IV, V, and VI hereof.

Only operators of storm water dischargers from small municipal separate storm sewer systems in the general permit area who submit a Notice of Intent and a storm water pollution prevention and management program in accordance with Part I.E. and Part II of this permit and obtain written authorization from the Department are authorized under this general permit.

This general permit shall become effective _____ and expires at midnight, on _____.

Bryan A. Ashby
Manager, Surface Water Discharges Section
Division of Water
Delaware Department of Natural Resources
and Environmental Control

Date Signed

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Part I. Discharges Authorized By This Permit**A. Area Covered**

This permit covers the designated small municipal separate storm sewer systems (MS4s) located within the State of Delaware. This permit applies to:

- 1) Systems owned by cities and towns;
- 2) Non-traditional designated MS4s;
- 3) Systems owned by a state or county; and/or
- 4) Systems owned by state transportation agencies.

B. Authorized Discharges

- 1) This permit authorizes the discharge of storm water from small MS4s defined at 40 CFR §122.26(b)(16). This includes small MS4s designated under 40 CFR §122.32(a)(1) and 40 CFR §122.32(a)(2). The permittee is authorized to discharge under this permit if:
 - a) The permittee is the operator of a small MS4 within the permit areas described in Part I.A;
 - b) The permittee is not a large or medium MS4 within the permit areas described in Part I.A;
 - c) The area is located fully or partially in an urbanized area as determined by the latest Decennial Census by the Bureau of Census; and
 - d) The permittee submits a Notice of Intent in accordance with Part I.E of this permit and obtains written authorization from the Delaware Department of Natural Resources and Environmental Control (the Department).
- 2) Limitations on Coverage

The following discharges, whether discharged separately or commingled with municipal storm water, are not authorized by this permit:

- a) Non-storm water and Industrial Storm Water:
Discharges of materials other than storm water, discharges of storm water associated with industrial activity or other storm water discharges required to obtain an NPDES permit, except where such dischargers are:
 - i) Regulated by a separate NPDES permit or the discharger has applied for such

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- permit;
- ii) Covered under the Department's NPDES General Permit Program regulations for Industrial Storm Water; or
 - iii) Identified by and in compliance with Part II.A.2 (a)(iv)

b) Spills

Where the discharge of materials resulting from a spill is necessary to prevent loss of life, personal injury, or sever property damage, the permittees shall require the responsible party to take all reasonable steps to prevent any adverse effects on human health or the environment, and follow up with any and all measures available to permittees that require responsible party(ies) to ensure public safety. (See also Part II.A.2) This permit does not transfer the liability for the spill itself from the party(ies) responsible for the spill nor relieve the party(ies) responsible for the spill from the reporting requirements under 7 Del.C. Chapter 60, §6028.

- c) Discharges shall not cause, have the reasonable potential to cause, or contribute to an exceedance or violation of any applicable surface water quality standards, including but not limited to:
 - i) Discharges of substances or materials in amounts that are toxic, or that would be toxic to humans, fish, aquatic life or wildlife as defined in the Delaware Water Quality Standards ("WQS");
 - ii) Discharges of floatable debris, oils, scum, foam, or grease in other than trace amounts; and
 - iii) Discharges that cause or contribute to degradation or loss of State-designated beneficial uses.

C. Permittee Responsibilities

- 1) The permittee(s) is(are) responsible for:
 - a) Compliance with permit conditions relating to discharges from those portions of the MS4 that the permittee operates or maintains;
 - b) Compliance with the annual reporting requirements specified in Part IV.F;
 - c) Collection of representative wet weather monitoring data required by Part II.B.2; and
 - d) Developing a Storm Water Pollution Prevention and Management Program (SWPP&MP) and Monitoring as specified in Part II.

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- 2) When two or more entities are co-permittees within an area covered by one Phase II MS4 general permit, permittees are responsible for:

- a) compliance with permit conditions relating to discharges from portions of the MS4 where operation or maintenance of the MS4 is shared, where implementation of the Storm Water Pollution Prevention and Management Program ("SWPP&MP") set forth herein is shared or where responsibility for either system operation or maintenance or storm water management program implementation is transferred from one permittee to another in accordance with legally binding agreements.
- b) tasks specifying the implementation of the SWPP&MP elements set forth herein shall be described, identifying parties responsible, within an inter-jurisdictional agreement. No later than six (6) months following the date of NOI Authorization to Discharge from the Department, all co-permittees should coordinate to develop an inter-jurisdictional agreement that defines relative responsibilities for each of the activities required herein, with a final agreement due within 15 months of the date of NOI Authorization to Discharge from the Department included within the SWPP&MP. The inter-jurisdictional agreement shall address, at a minimum, the following elements:
 - i. roles and responsibilities for each permittee, by SWPP&MP element
 - ii. monitoring responsibilities
 - iii. reporting responsibilities
 - iv. financial arrangements between permittees (if any), and
 - v. communication/coordination between permittees

Commented [km1]: LO-needs to be reworded

Commented [km2]: KM-what happens during the first 15 months?

Permittees shall conduct an annual meeting of all co-permittees to coordinate the implementation of the SWPP&MP. Permittees shall prepare meeting notes from each annual meeting for inclusion in each Annual Report to the Department.

Co-permittees will remain individually responsible for fully complying with all requirements of the permit and terms as outlined within the SWPP&MP. Upon execution, the inter-jurisdictional agreement described herein shall be submitted to the Department and incorporated as an Appendix into the SWPP&MP described in Part II.

D. Discharge Limitations

- 1) The permittee must create, manage, implement and enforce a Storm Water Pollution Prevention and Management Program (SWPP&MP) in accordance with the Clean Water Act and corresponding storm water NPDES regulations, 40 C.F.R. Part 122, to

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meet the following requirements:

- a) Effectively prohibit pollutants in storm water discharges or other unauthorized discharges into the MS4 as necessary to comply with existing Delaware Water Quality Standards (WQS);
 - b) Attain applicable Waste Load Allocations (WLAs) for each established or approved Total Maximum Daily Load (TMDL) for each receiving water body, consistent with 33 U.S.C. § 1342(p)(3)(B)(iii); 40 C.F.R. § 122.44(k)(2) and (3);
 - c) Compliance with all other provisions and requirements contained in this permit, and in plans and schedules developed in fulfillment of this permit; and
 - d) Compliance with the provisions contained in Parts II through IV of this permit, including any measurable goals as contained within the SWPP&MP, shall constitute adequate progress toward compliance with Delaware WQS and WLAs for this permit term.
- 2) If permittee determines that, despite their best efforts to comply with Section D.1) above, any of the preceding discharges persist, notwithstanding implementation of the SWPP&MP and other requirements of this permit, the permittee, shall notify the Department of the determination and thereafter, shall prepare and submit a report, hereafter referred to as the "Assessment Report", that shall be included within the Annual Report and shall:
- a) Identify and describe all Best Management Practices (BMPs) currently being employed in that portion of the MS4 where the offending discharge(s) persist;
 - b) Assess the effectiveness of those existing BMPs by obtaining and analyzing all existing data necessary including [maintenance records](#) and acres being treated by the BMPs in order to assess existing BMP effectiveness; and
 - c) Identify any improvements to be made or any additional BMPs or control measures to be employed to address the conditions noted, including a schedule for implementing those improvements or additional measures. Each such additional BMP or control measure shall be incorporated by reference into the SWPP&MP described in Part II and into this permit.

Commented [km3]: In a certain time frame?

E. Obtaining Coverage

- 1) [Regulated](#) Small MS4s seeking coverage under this permit, must submit a Notice of Intent (NOI) (using form available at [XXXX.com](#) or by contacting the Department at 302-739-9946) which contains the following information:
 - a) Name of person responsible for overall coordination of the storm water management program, mailing address and phone number;

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- b) Name of entity;
- c) Identification of the legal status of the operator(s) of the MS4 as either federal, state, county, or other public entity. If the municipality is a city or town, indicate if there are other MS4s within its boundaries, such as state highways, universities, prisons;
- d) Identification of the names of all known waters that receive a discharge from the MS4. Maps are available from the USGS-U.S. Department of Interior website (<http://store.usgs.gov/>)
 - i) If known, indicate the number of outfalls discharging to each waterbody.
 - ii) Indicate the designated uses of each waterbody (as designated in the State of Delaware Surface Water Quality Standards as amended on June 11, 2011 (<http://water.epa.gov/scitech/swguidance/standards/wqslibrary/upload/dewqs.pdf>)).
 - iii) Indicate whether the receiving water body is listed in the "State of Delaware 2012 Combined Watershed Assessment Report (305(b) and Determination for the Clean Water Act Section 303(d) List of Waters Needing TMDLs (<http://www.dnrec.delaware.gov/swc/wa/Pages/WatershedAssessment305band303dReports.aspx>)). If the water body is included here, provide the following details:
 - (1) TMDL status or Pollutant Attainment Classification;
 - (2) Pollutant or stressor causing impairment; and
 - (3) Probable source of pollutant or stressor (according to the 303(d) list); and
- e) The NOI must be signed by an appropriate official (See Part V.K. of this permit) and contain the following certification text:

"I certify under penalty of law this document and all attachments were prepared under my direction, or supervision, in accordance with a system designed to assure that qualified personnel gathered and evaluated the information submitted. Based upon my inquiry of the person(s) directly responsible for gathering the information, the information is, to the best of my knowledge, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of a fine and imprisonment for willful violations."

The initial Notice of Intent must be submitted within 180 days after official notice of MS4 designation under 40 CFR 122.32(a)(2) by the Department, unless granted a longer period of time by the Department or EPA.

For the reapplication processes, the NOI shall be submitted to the Department no later than 180 days before the expiration date of this permit. In the event that a

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timely and sufficient reapplication has been submitted and the Department is unable, through no fault of the permittee, to issue a new permit before the expiration date of this permit, the terms and conditions of this permit are automatically continued and remain fully effective and enforceable.

2) Submission of Notice of Intent

All permittees must submit the Notice of Intent to the Department at the following address:

State of Delaware
Department of Natural Resources & Environmental Control
Division of Water/Surface Water Discharge Section/MS4
89 Kings Highway
Dover, DE 19901

F. Permit Term

This permit shall remain effective for a period not to exceed five (5) years. The terms and conditions of an expired permit are automatically continued pending issuance of a new or reissued permit if:

- 1) The permittee(s) has(ve) submitted a timely and sufficient NOI for a new or reissued permit at least 180 days prior to the permit expiration date, unless permission for a later date has been granted by the Secretary as specified within Part V.H herein,
- 2) The Department is unable, through no fault of the permittees, to issue a new permit before the expiration date of the previous permit.

All content and timelines contained within this permit and the most recent Department-approved SWPP&MP will remain enforceable under this permit beyond the expiration date if the permit is administratively extended.

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Part II. Storm Water Pollution Prevention and Management Program (SWPP&MP) and Monitoring

Within 15 months from the effective date of this permit, the permittees shall submit a final comprehensive SWPP&MP as specified herein, which is designed to control the quality of the storm water discharged from the MS4 referenced herein. The permittees shall develop the SWPP&MP with the following submission deadlines:

1. SWPP&MP Document Outline: submitted to the Department within 6 months from the date of NOI Authorization to Discharge from the Department.
2. SWPP&MP final draft for Department review: submitted to the Department within 12 months from the date of NOI Authorization to Discharge from the Department.
3. Final SWPP&MP: submitted to the Department within 15 months from the date of NOI Authorization to Discharge from the Department.
4. Month 15-16: Department review
5. Month 16-17: Plan modification per the Department's requirements
6. Month 17-18: Department approval and plan finalization
7. Month 18: Finalization and implementation of the SWPP&MP

The Department will send the permittees comments, if any, within 30 days after plan submission to the Department. If the review and approval period by the Department is not met at months 15-18, implementation of the plan by permittees shall be adjusted accordingly.

The SWPP&MP shall include all requirements set forth in this Section and shall be consistent with Section 402(p)(3)(B) of the Act, the federal NPDES storm water regulations in 40 C.F.R. § 122.34, and Delaware Executive Order No. 61, "Green Infrastructure" (2004).

The SWPP&MP shall contain measurable goals and shall describe the controls necessary to effectively prohibit the discharge into the MS4 of any materials other than storm water (see Part II.A.2.a.iv). The SWPP&MP shall outline measures that will reduce the discharge of pollutants from the MS4 and shall also include a schedule for implementation.

All BMPs, control measures, and other actions to be implemented as part of this permit shall be described in detail in the SWPP&MP. The SWPP&MP shall contain contact information for at least one person who will be responsible for implementing and/or coordinating the storm water management program for each permittee. The SWPP&MP shall cover the term of this permit and shall be updated as necessary, or as required by the

Commented [km4]: LO-the permit should contain measureable goals-it is the responsibility of DNREC to determine MEP. Goals should not be left up to the permittee to determine.

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Department, to ensure compliance with the statutory requirements of Section 402(p)(3)(B) of the Act. Modifications to the SWPP&MP shall be made in accordance with this permit.

Implementation of the SWPP&MP may be achieved through participation with the other permittees, public agencies, or private entities in cooperative efforts to satisfy the requirements of Part II in lieu of creating duplicate program elements for each individual permittee. The purpose of the SWPP&MP, taken as a whole, shall achieve the “effective prohibition of non-storm water discharges”, and the compliance with Water Quality Standards from section 301(b)(1)(C) of the Act through the implementation of “Maximum Extent Practicable” standards from Section 402(p)(3)(B) of the Act and Title 7, Del. C. §7201-9.1.1.3.3.

Those permittees that have a SWPP&MP in place prior to being covered under this permit shall continue to implement it until their new SWPP&MP is approved.

A. Storm Water Pollution Prevention and Management Program Requirements

The SWPP&MP shall be implemented in a manner consistent with the following requirements. Additionally, all permittee staff responsible for one or more program elements shall receive annual training that relates to the type of work performed by the employee, to be quantified as a measureable standard within the SWPP&MP. Examples include: storm water design and plan review; inspection and maintenance of the MS4 system or BMPs; the proper location, design, maintenance of green technology practices; or spill prevention/clean-up.

1. Public Education/Public Involvement

The permittees shall develop and implement an education and outreach program utilizing available media of their choosing that is designed to: (1) Increase the knowledge of the target communities regarding MS4s, impacts of urban runoff on receiving waters, and potential BMP solutions for the target audience; (2) Change the behavior of target communities to reduce pollutant releases to MS4s and the environment; and (3) Decrease the discharge of pollutants to the MS4 by engaging the public.

The public education and outreach program shall include the following:

- a) As part of the SWPP&MP, develop and implement a public outreach and education strategy that includes:
 - Clear goals and objectives

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- Identified target audiences
- Message(s) specific to the target audiences
- Packaging and distribution of the message(s)
- Evaluation of the outreach plan

The education and outreach program shall be developed to promote, publicize and facilitate:

- (i) public reporting of the presence of illicit discharges or improper disposal of materials, including floatables, into the MS4. [via a publicly-listed, water quality citizen complaints/reports telephone number](#);
 - (ii) the proper management and disposal of used motor vehicle fluids and household hazardous wastes;
 - (iii) the proper management and disposal of grass clippings, leaf litter and domestic animal wastes;
 - (iv) the proper use of water to limit excess pollutants from non-storm water discharges from activities such as washing cars and lawn irrigation, from entering the MS4;
 - (v) the proper use, application, and disposal of pesticides, herbicides, and fertilizers by commercial and private applicators and distributors;
 - (vi) public participation events, such as stream clean-ups, drain stenciling, etc.;
 - (vii) the proper maintenance of BMPs directed toward private and commercial property owners, and state or municipal entities responsible for maintenance; and
 - (viii) opportunities for residential installation of Low Impact Development (LID) practices, and the use of Green Technology BMPs that reduce runoff and mimic natural hydrology.
- (b) For new permittees a Public Education and Outreach Program shall be developed and implemented during the first year of coverage under the General Permit and shall be reviewed and revised as necessary. For permittees that have an existing Public Education and Outreach Program, the program shall be reviewed and updated within the first year of coverage under the General Permit. Subsequently, the Education and Outreach Program shall be updated as necessary for all permittees to remain effective and relevant to current conditions. The permittees' program shall be designed to achieve measurable improvements in the target audience's understanding of the causes and impacts of storm water pollution and the steps they can take to prevent it.

Commented [km5]: Move from IDD&E section?

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- (c) The Education and Outreach Program shall include at least two public educational opportunities focusing on storm water management each year and shall ensure that a minimum of one impression for every two people (population within the permittee's jurisdictional boundaries) per year are made on the general public about storm water quality via direct contact, print, local TV access, local radio, internet, or other appropriate media.
- (d) A statistically-valid public education survey to evaluate the effectiveness of the Education and Outreach Program in increasing public awareness and changing behaviors about storm water pollution. A baseline survey (Public Education Survey #1) shall be conducted beginning within 18 months of the date of NOI Authorization to Discharge from the Department with the results submitted to the Department 6 months after the survey starts. A second survey (Public Education Survey #2) shall be conducted beginning within approximately 3.5 years of the date of NOI Authorization to Discharge from the Department (2 years after Public Education Survey #1). Survey results shall be submitted to the Department 6 months after the survey begins. The two surveys shall be consistent so results are comparable. If upon comparison of the two surveys, no measurable difference in public awareness and behavior is evident, the permittees shall reevaluate their Public Education and Outreach program in order to determine more effective methods of conveying their message. The Department will provide a sample survey for those permittees as an option for permittees to implement.
- (e) No later than 12 months from date of NOI Authorization to Discharge from the Department, develop and implement a process for the public to review and comment on the permittees' draft SWPP&MP. The permittees shall develop and implement a process for consideration of public comments on the SWPP&MP.

Commented [km6]: LO-does DNREC have this yet? If so, can we view a copy?

Commented [km7]: LO-shouldn't the permit specify this?

2. Illicit Discharge Detection and Elimination

a) Prohibitions

- (i) Within two years of issuance of NOI Authorization to Discharge from the Department, the permittee shall develop a county or municipal statute or ordinance or similar means, to effectively prohibit the discharge of materials other than storm water (refer to Part II.A.2.a.iv) into the MS4. Permittee shall require the

Commented [km8]: LO-compare with Newark, Dover, and DOT in Kent County existing requirements
Should be different for new versus renewal

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elimination of illicit discharges and improper disposal practices and abatement and clean up as expeditiously as reasonably possible. Where the prompt elimination of an illicit discharge is not possible, an expeditious schedule for removal of the discharge shall be developed and required of the party responsible for the illicit discharge. In the interim, the permittees shall require the operator of the illicit discharge to take all reasonable and prudent measures to minimize the discharge of pollutants to the MS4.

- (ii) The discharge or disposal of used motor vehicle fluids, household hazardous wastes, grass clippings, leaf litter, domestic animal wastes and sanitary sewer overflows (SSOs) into the MS4 ~~shall be~~ is prohibited. The permittees shall promote - through education, public information and other appropriate measures - the proper management and disposal of used motor vehicle fluids (at a minimum, oil and antifreeze) and household hazardous waste materials (including paint, solvents, pesticides, herbicides, and other hazardous materials). The permittees shall coordinate such efforts with the Delaware Solid Waste Authority, the Department's Division of Air, the and the Department's Division of Waste and Hazardous Substances. The permittees shall explore opportunities to facilitate existing recycling and household hazardous waste collection programs and identify ways to encourage more participation.

- (iii) The permittees shall create and maintain a standard operating procedure and shall properly train all workers on methods to contain and safely remove wastes (including disinfection) originating from SSOs to avoid discharge to any portion of the MS4. Permittee may refer to The Collection System Collaborative Benchmarking Group's Guidance Document, "Best Practices for Sanitary Sewer Overflow Prevention and Response Plan". Any SSO that enters the MS4 or any SSO over fifty (50) gallons that has the potential to impact the MS4 shall be reported to the Department's 24-hour Spills and Releases hotline at 1-800-662-8802.

- (iv) Unless identified as a significant source of pollutants to waters of the State, the following non-storm water discharges are examples of activities allowed to enter the MS4. Other activities may apply if substantiated by permittees within the SWPP&MP and approved by the Department:

- a. water line flushing;
- b. diverted stream flows;

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Commented [km9]: LO-terms are too vague/unenforceable.

KM-should there be a DNREC standard timeframe?

Commented [km10]: KM-How soon after the spill?

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- c. rising groundwaters;
- d. uncontaminated groundwater infiltration to separate storm sewers;
- e. uncontaminated pumped groundwater;
- f. discharges from potable water sources;
- g. foundation drains;
- h. air conditioning condensate;
- i. irrigation water;
- j. springs;
- k. water from crawl space pumps;
- l. footing drains;
- m. individual residential vehicle washing;
- n. flows from riparian habitats and wetlands;
- o. dechlorinated swimming pool discharges; and
- p. discharges or flows from emergency fire fighting activities.

(b) Illicit Discharge Detection Program

- (i) The SWPP&MP shall include a program to detect illicit discharges and improper disposal into the MS4 and to require appropriate corrective action, either the elimination of the illicit discharge(s) or obtaining an NPDES permit for the continuance of the discharge. Each permittees' program shall include a system to prioritize and investigate complaints/reports or monitoring information that indicates potential illicit discharges, including a spill or illegal dumping. Permittees shall immediately respond to problems/violations judged by the permittee to be urgent, severe, or an emergency, including, but not limited to, discharges that may pose a hazard to human health or discharges that pose a substantial endangerment to aquatic life. Within two years of the date of NOI Authorization to Discharge from the Department, each permittee shall provide a publicly-listed, water quality citizen complaints/reports telephone number.

Commented [km11]: Run-on?

Commented [km12]: Moved to Public Education / Public Involvement section

Commented [km13]: LO-that's a long time for a phone number

(ii) Mapping

Commented [km14]: LO-Need separate requirements for new versus renewal permits!

- a. Develop, if not already completed, a storm sewer system map, showing the location of all outfalls and the names and location of all waters of the United States that receive discharges from those outfalls; (40 CFR 122.34 (b)(3)(ii)(A));
- b. Develop, if not already completed, a map of all storm sewer data and structural BMPs within the boundaries

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of permitted MS4 area;

- c. At least once a year, the permittees shall revisit and update, as necessary, BMP GIS data layers (or other mapping method) and storm sewer data. The mapping shall show the location of all outfalls and drainage outlets and the names and location of all waters that receive discharges from those outfalls. Structural BMPs are to be included, along with other green technology BMPs, but smaller, residential-type dispersed BMPs, such as rain barrels and rain gardens, need not be included. Mapping may include all existing and readily available information including project plans, records, drainage maps and field surveys, and must be based on methods that sufficiently identify structures in terms of data accuracy.
- d. Permittee shall submit all data layers and/or mapping with the Annual Report package or when requested by the Department or EPA.

(iii) As part of the SWPP&MP, permittees shall develop a screening program for illicit discharges. The permittee's program shall include a schedule and methodology to evaluate at least 20% of their storm sewer system per year, using mapping and water quality data, to determine areas with high potential for illicit discharges and improper disposal. Dry weather screening and field inspection activities shall be conducted in these areas. The evaluation will consider, among other things, the following criteria.

- Past dry weather flow
- Past discharge complaints and reports
- Age of development
- Density of aging septic systems
- Aging or failing sewer infrastructure
- Density and age of industrial activities

(c) Illicit Discharge Elimination Program

The SWPP&MP shall include a plan to eliminate, where possible, illicit discharges. The Illicit Discharge Elimination Program shall include the following elements:

- (i) As part of the SWPP&MP, the permittee shall implement a program to reduce the discharge of floatables (e.g., litter and other

Commented [km15]: What about renewal permittee's? Different requirements now that they have evaluated the system.

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human-generated solid refuse) toward achieving compliance with water quality standards. The floatables control program shall include source controls and, where necessary, structural controls.

- (ii) If at any time the permittee, the Department, or EPA becomes aware of any illicit discharge, the permittee must take appropriate actions to address this condition within 30 days, documenting measures that were used to correct the condition. Such permit requirements do not preclude any enforcement action that may be taken by either the Department or EPA at any time.

(d) Industrial Storm Water Program

The permittee shall assist the Department with the inventory of Industrial Facilities within the boundaries of the permitted MS4. This inventory shall include, but not be limited to, those facilities subject to 7 Del. C. §7201-9.1, State of Delaware *Regulations Governing Storm Water Discharges Associated with Industrial Activity* (Industrial Storm Water Regulations). The method of assistance will begin with the Department providing the permittee with a list of the current permitted facilities within their jurisdiction and with the list of all SIC codes that are covered under the Industrial Storm Water Regulations. The permittee will then add to this list as appropriate facilities are identified.

Commented [km16]: LO-should we provide some examples?

This inventory shall contain the following:

- a) Facility name and address;
- b) Mailing address;
- c) Operator name and contact information;
- d) SIC code or activity description; and
- e) GPS coordinates/GIS point data layer file, if available.
- e)f) Receiving stream(s) and status

The permittee shall perform visual inspection of industrial facilities from a public vantage point (e.g. road or stream access) to assess general compliance with the Industrial Storm Water Regulations. In the event that it appears the facility may not be in compliance, the permittee shall inform the Department.

Commented [km17]: Should this include visual inspection of outlet / where discharges exit the facility property?

The permittee shall provide the Department with the inventory of facilities and any observations of those facilities in the Annual Report package.

3. Storm Water Management During Construction

- a) The SWPP&MP shall include a program to reduce the discharge of pollutants from active construction sites that are captured under the Delaware Sediment and Stormwater Regulations and NPDES Construction General Permit requirements to address both sediment and pollutants other than sediment discharged during construction, such as those noted in (iv) below. All permittees and co-permittees will be responsible for implementing and enforcing a program to reduce the discharge of pollutants from construction sites, including:
- i) Requirements for the review and approval of Sediment and Stormwater Plans according to standards set within the current Delaware Sediment and Stormwater Regulations (7 Del.C. Ch. 40) and Special Conditions for Storm Water Discharges Associated with Construction Activities (7 Del.C. Ch. 60);
 - ii) Requirements for the use and maintenance of appropriate structural and nonstructural sediment and erosion controls and other BMPs to reduce polluted discharges to the MS4 during the time when construction is underway;
 - iii) Requirement and procedures for the inspection of construction sites and enforcement of control measures, and to notify operators if NPDES Construction General Permit requirements are not being met (i.e., Weekly inspections), and enforcement if necessary;
 - iv) Requirements for construction site operators to control wastes such as discarded construction or building materials, concrete truck washout, chemicals, litter, oil, and sanitation waste;
 - v) Inspection requirements to ensure that BMPs are properly constructed and installed according to standards and specifications contained in the Delaware Erosion and Sediment Control Handbook;
 - vi) Development and adoption of a local regulatory mechanism for enforcing onsite compliance with numbers (i) through (v) above within three (3) years of the date of NOI Authorization to Discharge under this MS4 General Permit from the Department; and
 - vii) If any or all of the Construction Site Stormwater Management Program will be overseen by another entity, including a Sediment and Stormwater Program Delegated Agency, the permittee shall enter into a Memorandum of Understanding (MOU) with said agency that will ensure full coverage of permittees responsibilities. This MOU shall be submitted to the Department no later than six (6) months following the date of NOI Authorization to Discharge from the Department.

Commented [km18]: What happens during first 3 years?

- b) Any amendments to the foregoing State or Federal regulations that may become effective during the term of this permit shall apply.
- c) Title 7, Del. C., Chapter 40 and the Department's Sediment and Stormwater Regulations establish a statewide sediment and stormwater program designed to control the quantity and quality of storm water runoff during construction. The Department has delegated the authority to administer the program to Delegated Agencies throughout the state. The following information will be used to evaluate compliance with this section of the permit:
 - i) Tri-ennial Delegation Review under the Delaware Sediment and Stormwater Program
 - ii) Department and/or other inspection reviews
- d) Should the Department's various Sediment and Stormwater Program Delegated Agencies fail to continue to implement their existing programs in compliance with the governing statute, then all permittees will continue to be responsible for the above conditions.

4. Post Construction Stormwater Management

- a) The SWPP&MP shall include a program to reduce the discharge of pollutants and reduce the quantity of water leaving post-development construction sites for new and re-development, as prescribed under the Delaware Sediment and Stormwater Regulations.
- b) Permittees will-shall be responsible for implementing and enforcing a program to address post construction stormwater runoff (quantity and quality) from new development and redevelopment projects. The program must include:
 - i) Procedures to require adequate long-term operation and maintenance of any BMPs employed;
 - ii) Requirements to inspect privately-owned stormwater management BMPs installed after 1991, for private and commercial developments, not to include resident-owned micro-scale BMPs such as rain barrels and small resident-owned rain gardens. Inspections shall occur on an annual basis, except in instances after BMP repair, in which case BMPs shall be inspected within one year after repair. BMPs shall be inspected based on any standards and specifications provided by the Delaware Sediment and Stormwater Program;
 - iii) Requirements to update BMP inventories annually (see Mapping requirements in Part II A (2)(b)(ii));
 - iv) Development and adoption of a local regulatory mechanism addressing post-

Commented [km19]: LO-existing permittees should already have this.

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construction stormwater quantity and quality and limiting the discharge of pollutants via stormwater runoff within three (3) years of the date of NOI Authorization to Discharge under this MS4 General Permit from the Department; and

- v) If any or all of the Post Construction Stormwater Management Program will be overseen by another entity, including a Sediment and Stormwater Delegated Agency, the permittee shall enter into a MOU with said agency that will ensure full coverage of permittees responsibilities. This MOU shall be submitted to the Department no later than six (6) months following the date of NOI Authorization to Discharge from the Department.
- c) Any amendments to the foregoing State or Federal regulations that may become effective during the term of this permit shall apply.
- d) Title 7, Del. C., Chapter 40 and the Department's Sediment and Stormwater Regulations establish a statewide sediment and stormwater program designed to control the quantity and quality of storm water runoff post-construction. The Department has delegated the authority to administer the program to Delegated Agencies throughout the state. The following information will be used to evaluate compliance with this section of the permit:
 - i) Tri-ennial Delegation Review under the Delaware Sediment and Stormwater Program
 - ii) Department and/or other inspection reviews
- e) Should the Department's various Sediment and Stormwater Program Delegated Agencies fail to continue to implement their existing programs in compliance with the governing statute, then all permittees will continue to be responsible for the above conditions.

5. Good Housekeeping

The SWPP&MP shall include a good housekeeping program that is designed to prevent ~~and/or reduce~~ discharges of pollutants associated with the permittees' operations. The good housekeeping program must include:

- a) An employee training program consistent with 40 CFR 122.34(b)(6);
- b) A plan to include the current inventory with provisions to update the inventory annually for all facilities owned or operated by any of the permittees located in the MS4 service area that either maintain coverage under the NPDES Industrial Storm Water General Permit Program or that have the potential to contribute

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polluted discharges as a result of storm water runoff. These facilities can include, but are not limited to, maintenance yards, municipally-owned parking lots, or municipally-owned parks. This list is to be submitted in the Annual Report package. All facilities on the list must be inspected by the permittee on an annual basis according to Department guidelines. Details of these inspections shall be submitted to the Department in the Annual Report package;

- c) A street sweeping program. All permittees that own, operate, or maintain roads shall develop a street sweeping program which shall be described within the SWPP&MP. The SWPP&MP must prescribe a numeric measurable street sweeping regime. Permittees must demonstrate the adequacy of the street sweeping regime for pollutant removal and improved water quality. The SWPP&MP shall also describe procedures for the proper disposal of street sweeping debris and waste. All street sweeping activities should be summarized in the Annual Report package and include information about size, location, and frequency, of area swept and area draining to streets; and
- d) A program to reduce the contribution of pollutants associated with the application, storage and disposal of pesticides, herbicides, and fertilizers from permittees' areas and activities to the MS4. The program shall include, but not be limited to:
 - i) Educational programs for permittees' employees who work directly with pesticides, herbicides, and fertilizers;
 - ii) A Nutrient Management Plan for all urbanized areas receiving nutrient applications according to requirements set forth by the Delaware Nutrient Management Law (Del. C. Title 3, Chapter 22 §2201-§2290), with an exemption of construction sites where nutrients are applied to achieve either temporary or permanent stabilization;
 - iii) Application by certified applicators and annual summary report of applications;
 - iv) Integrated pest management measures that incorporate non-chemical solutions;
 - v) The use of native vegetation; and
 - vi) The collection and proper disposal of unused pesticides, herbicides, and fertilizers.
- e) A program to manage snow and ice, including salt storage practices and alternative deicing practices.
- f) A program to control litter on streets and highways, including the proper disposal of collected material.

Commented [km20]: LO-Include an agreement w/DelDOT if they own the roads?

Commented [km21]: LO- is this okay?

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B. Monitoring Requirements as Part of the SWPP&MP

1. Total Maximum Daily Loads (TMDL) Waste Load Allocations (WLA) and Applicable Water Quality Standards

A number of TMDLs have been approved or established by the EPA for waters located in the State of Delaware to which the permittees' MS4 may discharge. These TMDLs may assign specific numeric Waste Load Allocations (WLAs) to watersheds located within the MS4 permit area. The WLAs represent all pollutant sources, including urban storm water, industrial storm water, agriculture, and septic.

For each TMDL with an applicable WLA approved prior to the effective date of this permit, the applicant shall submit the following information as part of the SWPP&MP document:

- a) TMDL name and pollutant(s) of concern;
- b) Description of applicable WLA;
- c) For each applicable WLA that will not be achieved during the permit term, a compliance schedule must accompany the application outlining how the applicant plans to comply with the applicable WLA, including timelines, interim milestones, and an end date; and
- d) Description of the actions that will take place over the permit term to achieve each applicable WLA or to make progress toward interim milestones as described in a compliance schedule.

This permit does not set numeric effluent limits. While permittees will not be required to meet the entire numeric allocation within this permit term, permittees shall address the TMDL WLAs for storm water associated with the MS4, in addition to applicable water quality standards from 7 Del. C. §7201, through the iterative implementation of programmatic BMPs that will prevent, reduce, or remove the targeted pollutants. In the first term of this permit, this will be accomplished for all watersheds located within the MS4 permit area by implementing all components within the SWPP&MP. Specific elements within the SWPP&MP which can be used to demonstrate load reductions are contained in the requirements for BMP monitoring and analysis. If any monitoring as part of the SWPP&MP reveals that additional or different BMPs are necessary, the SWPP&MP shall be modified appropriately.

Implementation of BMPs to address TMDLs and applicable water quality

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standards will be staged, with permittees implementing reductions over iterative stages of a long-term program. Additional information generated during each stage of BMP implementation will support future decisions regarding the feasibility of achieving existing criteria. For any bacteria TMDLs, permittees shall implement practicable, cost effective BMPs that have been identified as being effective at addressing the pollutant of concern.

In order to assist the Department to further break down WLAs for urban storm water, by year four (4) of the permit term, the permittees shall submit a GIS layer, or other Department approved mapping method, for all urbanized/impervious areas within the coverage area of this permit, which shall be accomplished by confirming currently available land use/land cover data and impervious surface data (urban storm water, impervious surfaces, and industrial storm water). The impervious areas within the MS4 boundaries shall be identified as directly connected (effective impervious) to the MS4 or not directly connected to the MS4. This information shall be submitted to the Department with the Year 4 annual report and updated with each annual report thereafter.

For TMDLs throughout the state, where WLAs are assigned specific to urban storm water, the permittees shall be responsible for addressing reductions required by the TMDL as categorized as urban storm water and shall establish reductions over iterative stages of a long-term program, which shall be outlined within the SWPP&MP. Approved TMDL reports for each waterbody are available (www.dnrec.state.de.us/water2000/Sections/Watershed/TMDL/tmdlinfo.htm).

For the Chesapeake Bay TMDL, as established on December 29, 2010, permittees within the Chesapeake drainage area will be responsible for addressing reductions as categorized as urban storm water and shall establish reductions over iterative stages of long-term program consistent with Delaware's Chesapeake Bay Watershed Implementation Plan (WIP), the Chesapeake Bay TMDL, and applicable Pollution Control Strategies (PCS).

For calculating TMDL load reductions for all TMDLs other than the Chesapeake Bay TMDL, all BMPs implemented after 1997 (baseline for establishment of TMDL WLAs) can be counted toward these reductions, which is based on the sampling timeframe in which TMDL data was collected. Annual loads, rather than daily loads, are to be used for all calculation and reporting purposes (<http://www.dnrec.delaware.gov/swc/wa/Pages/WatershedAssessmentTMDLs.aspx>). For calculating TMDL load reductions for the Chesapeake Bay TMDL, all BMPs implemented after 2005 can be counted toward those reductions.

2. Wet Weather Performance Monitoring Plan

- a) As part of the SWPP&MP, and consistent with 40 CFR 122.44(i), the permittees shall develop and implement a plan for monitoring and analyzing the expected pollutant load reductions using existing data on BMP performance, establishing regular monitoring stations throughout the regulated area as described within this permit, and calculating load reductions on future development. The monitoring plan shall be designed to demonstrate any progress toward achieving applicable Water Quality Standards. The analysis of the BMP performance standards data will be used in tandem with the water quality monitoring data to quantify the expected pollutant load reductions and provide an indicator of anticipated progress.
- b) As part of the SWPP&MP, the permittees shall develop and implement a statistically based wet-weather outfall monitoring program for the MS4 to provide the data necessary for the following tasks:
- i) To assess the effectiveness and adequacy of BMP implementation toward meeting TMDLs;
 - ii) To estimate the annual cumulative pollutant loadings from the MS4;
 - iii) To estimate the event mean concentrations and seasonal pollutants in discharges from major outfalls; and
 - iv) To identify and prioritize portions of the MS4 requiring additional controls.
- c) The permittees shall submit their Wet Weather Performance Monitoring Plan to the Department for approval as part of the SWPP&MP. Wet Weather Performance Monitoring Plan modifications (not to include changes in monitoring station locations) shall not be changed without notification to and approval from the Department.
- d) If additional or modified BMPs are determined to be necessary, the permittees shall modify the SWPP&MP using the process described in Part II.C below to include additional BMPs and modifications, the expected additional pollutant load reductions associated with the BMPs and modifications, and the associated schedule for implementing the BMPs and modifications.

Commented [km23]: Once a permit term?

Commented [km24]: Any minimum requirements per year?

3. Dry Weather Screening Plan

Permittees shall develop a Dry Weather Screening Plan per the requirements described in Part II.A.2.b(iii).

4. In-Stream Monitoring

This permit allows the State 305(b) reports to be used as a substitute for in-stream monitoring if appropriate to meet the goals of the SWPP&MP; the permittee may choose to provide in-stream monitoring data to support goals of TMDLs within the MS4 area.

Commented [km25]: LO- are we still okay with this?

C. Modification to the SWPP&MP

The SWPP&MP shall not be modified without the prior written approval of the Department, unless in accordance with items 1 through 4, below:

Commented [km26]: LO-delete?

- 1) Changes adding (but not subtracting or replacing) components, controls, or requirements to the SWPP&MP may be made at any time without advance written notification to the Department.
- 2) Changes replacing an ineffective or infeasible BMP specifically identified in the SWPP&MP with an alternate must be approved by the Department in advance and may be requested at any time. Such requests shall include the following:
 - a) An analysis of why the BMP is ineffective or infeasible, or a description of why the newly proposed BMP would be more applicable (public participation, partnership opportunity, grant funding opportunity);
 - b) Expectations on the effectiveness of the replacement BMP; and
 - c) An analysis of why the replacement BMP is expected to achieve the goals of the BMP to be replaced;
- 3) Any written requests to modify the SWPP&MP or changes made to the SWPP&MP shall include a certification signed by all permittees responsible for SWPP&MP implementation that all permittees were given an opportunity to comment on the proposed change(s) prior to its (their) submittal; and
- 4) Changes or Updates Required by the Department:
Upon notification from the Department that the SWPP&MP does not adequately address the requirements herein, the permittees shall modify the SWPP&MP and submit the proposed changes to the Department within the timeframe specified by the Department. If changes compromise any terms of the inter-jurisdictional agreement, a modified inter-jurisdictional agreement must be also executed.

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Part III. Evaluation of the SWPP&MP

No later than four (4) years from NOI Authorization to Discharge under this MS4 General Permit from the Department, the permittees shall conduct a comprehensive effectiveness analysis of the SWPP&MP, with analysis measures to be described in the SWPP&MP monitoring plan. This analysis shall quantify the associated expected load reductions to estimate the anticipated progress toward meeting all applicable WLAs, and the progress toward meeting the program's goals and objectives as outlined within the SWPP&MP. The analysis shall further determine whether the implementation of the current and revised BMPs identified in the SWPP&MP are sufficient to make progress toward meeting WLAs or if implementation of additional BMPs beyond those selected are necessary.

The permittees shall assess the effectiveness of the SWPP&MP based on:

1. Documentation of SWPP&MP activities;
2. Surveys of public awareness and changing behavior;
3. Estimates of change in loadings, that is:
 - a. added by development that occurs;
 - b. prevented or reduced by installation of BMPs associated with new development; or
 - c. prevented or reduced by installation of BMPs associated with existing conditions (i.e., retrofits); and
4. Available water quality sampling data, as sampled as part of the monitoring plan within the SWPP&MP.

For calculating TMDL load reductions for all TMDLs other than the Chesapeake Bay TMDL, all BMPs implemented after 1997 (baseline for establishment of TMDL WLAs) can be counted toward these reductions, which is based on the sampling timeframe in which TMDL data was collected (<http://www.dnrec.delaware.gov/swc/wa/Pages/WatershedAssessmentTMDLs.aspx>). For calculating TMDL load reductions for the Chesapeake Bay TMDL, all BMPs implemented after 2005 can be counted toward those reductions.

Progress toward reducing the TMDL pollutant loads will be demonstrated through the implementation of BMPs under the SWPP&MP that are targeted at reducing discharges of TMDL-related pollutants.

Commented [km27]: Repeat of paragraph on page 23

Commented [km28]: LO-Move to TMDL section? Seems out of place here

Part IV. Sampling and Reporting Procedures

A. Flow Measurement

Appropriate flow measurement devices and methods consistent with accepted scientific practices shall be selected and used to insure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall be installed, calibrated and maintained to insure that the accuracy of the measurements are consistent with the accepted capability of that type of device.

Commented [km29]: Should DNREC specify what devices and practices are acceptable – standardize the process?

B. Test Procedures

Test procedures for the analysis of pollutants shall conform to the applicable test procedures identified in 40 C.F.R., Part 136, unless otherwise specified in this permit.

C. Penalties for Tampering

State law, 7 Del. C. §6013, provides that any person who falsifies or knowingly renders inaccurate, any monitoring device or method required to be maintained under this permit shall upon conviction, be punished by a fine of not less than \$500 nor more than \$10,000 or by imprisonment for not more than six (6) months, or by both.

D. Record Contents

For each measurement or sample taken pursuant to the requirements of this permit, the permittee taking such sample shall record the following information:

1. The date, exact place, time and method of sampling or measurements;
2. The individual(s) who performed the sampling or measurements;
3. The date(s) analyses were performed;
4. The individual(s) who performed each analysis;
5. The analytical techniques or methods used;
6. The results of such analyses; and
7. Any quality assurance information.

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E. Retention of Records

All records and information resulting from the monitoring activities required by this permit, all records of analyses performed, records of calibration and maintenance of instrumentation, all original strip chart recordings from continuous monitoring instrumentation and copies of all reports required by this permit shall be retained for a period of five (5) years. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittees. Records shall be made available to the Department and to the public within a reasonable timeframe.

F. Annual Report Requirements

Permittees shall prepare and submit an Annual Report Package. If more than one entity is permitted via the same NOI Authorization to Discharge under this General Permit, one comprehensive annual report shall be submitted by the principal permittees, with input from the remaining co-permittees. The annual report shall be submitted to the Department Surface Water Discharge Section no later than June 30th of each year after issuance of NOI authorization and shall cover all activities related to this permit during the preceding calendar year. The annual report is expected to include a summary of the data documenting their compliance with this permit (Appendix A), in addition to one MS4 Summary Report Form (Appendix B) per permittee. Annual Report data should report quantifiable data and information whenever possible, as outlined in the SWPP&MP.

All permittees are jointly responsible for timely submittal of the system-wide Annual Report, and each section addressed within the Annual Report (using the Annual Report template) should identify the task, by jurisdiction. The Annual Report shall indicate which, if any, permittees have failed to provide any required information (as identified in the inter-jurisdictional agreement) on the portions of the MS4 for which they are responsible. Each permittee is responsible for the content of the report relating to those portions of the MS4 for which it is responsible, as determined in the inter-jurisdictional agreement, and for failure to provide information for the system-wide Annual Report.

After issuance of this permit, the first Annual Report submission shall include reporting information from the existing SWPP&MP as described in the most recent annual report submitted to the Department until the final SWPP&MP is adopted (18 months after issuance of the NOI Authorization under this permit by the Department). Once adopted, the Annual Report shall contain information relevant to the most recent SWPP&MP. Please refer to Appendix A for the proper reporting format. All MOU's entered into during the formation of the SWPP&MP must be contained in the annual report following their finalization.

Part V. Standard Permit Conditions

A. Legal Authority

Each permittee shall maintain legal authority to implement the programs outlined in the SWPP&MP as originally demonstrated in the NOI.

B. Duty to Comply

All discharges authorized herein shall be consistent with the terms and conditions of this permit. The violation of any effluent limitation or of any other condition specified in this permit shall be grounds for enforcement as provided in 7 Del. C. §6005; for loss of authorization to discharge pursuant to this permit; for permit revocation and reissuance or modification pursuant to this permit; or for denial of a permit renewal application. Pursuant to 7 Del. C. §6019, the Department may seek voluntary compliance by way of warning, notice or other educational means. However, the law does not require that such voluntary means be used before proceeding by way of compulsory enforcement.

C. Adverse Impact

The permittees shall take all reasonable steps to minimize any adverse impact on the environment resulting from noncompliance with this permit. This includes accelerated or additional monitoring as necessary to determine the nature and extent of noncompliance and to assess its impact.

D. Facilities Operation

The permittees shall at all times maintain in good working order and operate as efficiently as possible all structural controls, collection and treatment facilities and systems (and related appurtenances) installed or used by the permittees to achieve compliance with the terms and conditions of this permit. Proper operation and maintenance includes, but is not limited to, effective performance (based upon design), adequate funding, effective management, adequate operator staffing and training and adequate laboratory and process controls, including appropriate quality control procedures.

E. Removed Substances

Solids, sludges, filter backwash, or other similar substances removed in the course of collection or treatment of the discharges authorized herein shall be disposed of in a manner such as to prevent any pollutant from such materials from entering surface waters or groundwaters.

F. Availability of Reports

Except for data determined to be confidential under Section 308 of the Act and the Freedom of Information Act, all reports prepared in accordance with the terms and conditions of this permit shall be available for public inspection at the offices of the Department of Natural Resources and Environmental Control. As required by the Act, effluent data shall not be considered confidential. Knowingly making any false statement on any such report may result in the imposition of criminal penalties as provided for under 7 Del.C. §6013.

G. Transfer of Permit

In the event of any change in ownership or control of facilities from which the authorized discharges emanate, this permit may be transferred to another person if:

- 1) The current permittee notifies the Department, in writing, of the proposed transfer at least 30 days in advance of the proposed transfer date;
- 2) The notice includes a written agreement between the transferor and the transferee, indicating a specific date for transfer of permit responsibility, coverage, and liability; and
- 3) The Department within thirty (30) days of receipt of the notification of the proposed transfer does not notify the current permittee and the new permittee of intent to modify, revoke and reissue, or terminate the permit and require that a new application be submitted.

H. Reapplication for a Permit

At least 180 days before the expiration date of this permit, the permittees shall submit a new application for a permit, unless permission for a later date has been granted by the Secretary. The Secretary shall not grant permission for applications to be submitted later than the expiration date of the expiring permit. Failure to submit an application for renewal 180 days before permit expiration may not only cause a lapse in permit coverage, but may also result in enforcement action. In the event that a timely and sufficient reapplication has been submitted and the Department is unable, through no fault of the permittees, to issue a new permit before the expiration date of this permit, the terms and conditions of this permit are automatically continued and remain fully effective and enforceable.

I. Permit Modification, Revocation and Reissuance, and Termination

- 1) After notice and opportunity for a hearing, this permit may be modified, terminated, or revoked and reissued in whole or in part during its term for cause including, but not limited to, the following:
 - a) Violation of any terms or conditions of this permit;
 - b) Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts;
 - c) A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge(s); and/or
 - d) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.
- 2) In addition, after notice and opportunity for a hearing, this permit may be modified, revoked and reissued in whole or in part, but not terminated, for cause including, but not limited to, the following:
 - a) Facility modifications, additions, and/or expansions that are not otherwise sanctioned either by this permit or by the programs administered by the permittees in accordance with this permit;
 - b) Material and substantial changes or additions to the permittees' operation or activities which justify the application of permit conditions that are different or absent from this permit;
 - c) Information newly acquired by the Department, including, but not limited to, the results of the studies, planning, or monitoring described and/or required by this permit;

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- d) Revision, withdrawal or modification of State surface water quality standards or effluent limitations guidelines promulgated by the Department or the EPA, but only when the permit term or condition requested to be modified or revoked was based on a State water quality standard or an effluent limitation guideline duly promulgated by the Department or the EPA that was revised, withdrawn or modified;
 - e) Judicial remand of effluent limitation guidelines promulgated by the EPA, if the remand concerns that portion of the guidelines on which the permit term or condition was based and the request is filed within ninety (90) days of the judicial remand;
 - f) Any modification or revocation and reissuance of permits specifically authorized by the Clean Water Act;
 - g) To comply with any applicable standard or limitation promulgated or approved under Sections 301, 304 and 307 of the Clean Water Act, if the effluent standard or limitation so issued or approved:
 - i) Contains different conditions or is otherwise more stringent than any effluent limitations in the permit; or
 - ii) Controls any pollutant not limited in the permit.
- The permit as modified or reissued under this subparagraph shall also contain any other requirements of the Act then applicable;
- h) To contain a schedule of compliance leading to termination of the direct discharge by a date which is no later than the statutory deadline;
 - i) To modify a schedule of compliance in an issued permit for good and valid cause by a date which is no later than the statutory deadline; or
 - j) To address new TMDL requirements, including relevant WLAs.
- 3) The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

J. Right of Entry

The permittees shall allow the Secretary of the, the EPA Regional Administrator, and their authorized representatives, jointly and severally, upon the presentation of credentials and such other documents as may be required by law:

- 1) To enter upon the permittees' premises where a regulated facility or activity is located or conducted, or where any records are required to be kept under the terms and conditions of this permit; and

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- 2) At reasonable times to have access to and copy any records required to be kept under the terms and conditions of this permit; to inspect any monitoring equipment or monitoring method required in this permit; to inspect any structural controls, collection, treatment, pollution management, or discharge facilities required under this permit; and to sample any discharge.

K. Signatory Requirements

All applications, monitoring reports, SWPP&MP reports, certifications or other information required by this permit, whether submitted to the Department or maintained by the permittees, shall be signed as follows:

- 1) By a principal executive officer or ranking elected official; or
- 2) A duly authorized representative of that person. A person is a duly authorized representative only if:
 - a) The authorization is made in writing by the person described above and is submitted to the Department.
 - b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility or an individual or position having overall responsibility for environmental matters. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)

For purposes of this paragraph, the principal executive officer of a federal, state, or public agency includes: (i) The chief executive officer of the agency (e.g., Cabinet Secretary); or (ii) A senior executive officer having responsibility for the overall operation of a principal geographic unit of the agency (e.g., the Regional Administrator of EPA).

If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new notice satisfying the requirements of this paragraph must be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.

L. Civil and Criminal Liability

Commented [MSOffice31]: Need to add penalty ranges

Nothing in this permit shall be construed to relieve the permittees from civil or criminal penalties for noncompliance.

M. Discharge of Pollutants

Any person who causes or contributes to the discharge of a pollutant into waters of the State or the United States either in excess of any conditions specified in this permit or in absence of a specific permit condition, shall report such an incident to the Department as required under 7 Del. C. §6028.

N. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittees from any responsibilities, liabilities, or penalties to which the permittees are or may be subject under 7 Del. C. Chapter 60.

O. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittees from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation.

P. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

Q. Construction Authorization

This permit does not authorize or approve the construction of any onshore or offshore physical structures or facilities or the undertaking of any work in any navigable waters.

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R. Fiscal Resources

All permittees shall provide adequate finances, staff, equipment, and support capabilities to implement the SWPP&MP and the provisions within this permit. Each annual report shall include a demonstration of adequate fiscal capability from all permittees to meet the requirements of this permit.

S. Severability

The provisions of this permit are severable, and if any provisions of this permit, or the application of any provision of this permit to any circumstances, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected.

Part VI. Definitions

“Act” means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or the Federal Water Pollution Control Act Amendments of 1972) Pub.L. 92-500, as amended Pub.L. 95-217, Pub.L. 95-576, Pub.L. 96-483, Pub.L. 97-117, Pub. L. 100-4 (the Water Quality Act of 1987), Pub. L. 100-688, Pub. L. 100-581, Pub.L. 102-580, Pub. L. 102-240; 33 U.S.C. 1251 et.seq.

“Best Management Practices” (“BMPs”) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants. BMPs also include treatment requirements, operating procedures and practices to control facility site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. BMPs can be applied before, during or after pollution generating activities to reduce or eliminate the introduction of pollutants into receiving waters.

“C.F.R.” is an acronym for the Code of Federal Regulations.

“Co-Permittee” refers to the those entities applying for coverage under the Phase II MS4 General Permit in combination with other entities that hold jurisdictional authority over a designated MS4 area.

“Delegated Agency”, means the Conservation District, county, municipality, or State agency that has accepted responsibility in a jurisdiction for implementation of one or more elements of the Sediment and Stormwater Program as part of the Delaware Sediment and Stormwater Regulations within that jurisdiction.

“Department” means the State of Delaware Department of Natural Resources and Environmental Control.

“Discharge” for the purpose of this permit, when used without qualification, refers to the discharge of a pollutant.

“Discharge of a Pollutant” means any addition of any pollutant, or combination of pollutants, to State waters.

“Effective Impervious Area (EIA)” means square footage or other unit of area measurement that is directly connected to the drainage collection system and can include street surfaces, paved driveways, sidewalks connected to road curbing, rooftops which hydraulically connect to storm sewers, and parking lots.

“Illicit Discharge” means any discharge to a municipal separate storm sewer that is not

composed entirely of storm water except those sanctioned by a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting and other activities referenced in Part II.A.3. of this permit.

“Low Impact Development (LID)” means an approach to land development (or re-development) that works with nature to manage storm water as close to its source as possible. LID employs principles such as preserving and recreating natural landscape features, minimizing effective impervious areas to create functional and appealing site drainage that treats storm water as a resource rather than a waste product.

“Maximum Extent Practicable” for the purpose of this permit, means using measures that are capable of being done after taking into consideration cost, feasibility, existing technology, and logistics in light of overall facility operations and project purposes.

“MS4” means a Municipal Separate Storm Sewer System.

“Municipal Separate Storm Sewer” means: (1) a conveyance, or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, pipes or storm drains) owned or operated by a city, town, county, district, association, or other public body created by or pursuant to State law having jurisdiction over the disposal of sewage, industrial waste, storm water, or other wastes, storm water management, drainage or flood control, which is: (2) designed or used for collecting or conveying storm water; (3) is not a combined sewer; and (4) which is not part of a publicly owned treatment works as defined at 40 C.F.R. § 122.2.

“Permittees” refers to all of the entities listed on the Notice of Intent, and may include individual permittees, principal permittees and/or co-permittees.

“Person” means any individual, trust, firm, corporation (including a government corporation), partnership, association, institution, enterprise, state, municipality, commission, agency, political subdivision of a state or an interstate body, or an agent or employee thereof.

“Principal Permittee” refers to permittee that has been identified as the lead permittee for a group of permittees (co-permittees) joined by an inter-jurisdictional agreement to carry out the provisions of this permit

“Point Source” means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft, from which pollutants are or may be discharged. This term

does not include return flows from irrigated agriculture or agricultural storm water runoff.

“Pollutant”, for the purpose of this permit, means any substance, which causes or contributes to, or may cause or contribute to, the degradation of water, air, and soil resources or to the health of humans, animals, or aquatic life. Examples may include, but are not limited to excess nutrients, chemicals, toxic substances, industrial, municipal or agricultural wastes, etc.

“Pollution” or “Water Pollution” means the man-made or human-induced alteration of the physical, chemical, biological or radiological integrity of any State waters.

“Redevelopment”, including brownfield development, means any construction, alteration or improvement, including, but not limited to, the demolition or building of structures, filling, grading, paving, or excavating, where existing land use is residential, commercial, industrial, or institutional. Ordinary maintenance activities, remodeling of existing buildings, resurfacing of paved areas, and exterior changes or improvements are not considered to be redevelopment activities for the purposes of this permit.

“SWPP&MP” means Storm Water Pollution Prevention and Management Program.

“Secretary” means the Secretary of the State of Delaware Department of Natural Resources and Environmental Control.

“Storm Water” means storm water run-on or runoff, snow melt runoff, surface runoff and drainage.

“Structural controls” means installed or constructed curbs, dikes, berms, walls, sheds, impervious pads, ditches, diversions or other structures which limit the contribution or transport of significant materials and pollutants to storm water.

“Total Maximum Daily Load,” or TMDL, is a calculation of the maximum amount of a pollutant that a waterbody can receive and still safely meet water quality standards.

“Waters of the State” or “State Waters” means all water, on the surface and under the ground, wholly or partially within, or bordering the State of Delaware, or within its jurisdiction including but not limited to:

- (a) Waters which are subject to the ebb and flow of the tide including, but not limited to, estuaries, bays and the Atlantic Ocean;
- (b) All interstate waters, including interstate wetlands;
- (c) All other waters of the State, such as lakes, rivers, streams,(including intermittent and ephemeral streams), drainage ditches, tax ditches, creeks,

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mudflats, sandflats, wetlands, sloughs, or natural or impounded ponds;

(d) All impoundments of waters otherwise defined as Waters of the State under this definition;

(e) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in (a)-(d).

Waste and storm water treatment systems that would otherwise meet this definition are not "Waters of the State" or "State Waters".

"Watershed" means the land area that drains water to a particular stream, river, or lake.

"Water Quality Standards" means the Delaware Surface Water Quality Standards as amended on June 11, 2011 and as subsequently revised by incorporation by reference (7 Del. C. §7401).

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Appendix A: Annual Report Template

All permittees shall submit an annual system-wide report based on the template below. In the first Annual Report, the permittees may propose changes to this template to better reflect actions taken in compliance with the permit.

The annual report shall address the following:

A. Permittee Updates

1. Copy of Appendix B for all permittees (Summary Report Form)
2. Status and summary of inter-jurisdictional agreement and associated meetings (if applicable)
3. Summary of activities completed during the reporting period. The summary should describe and quantify program activities, responsible parties, and achievement of permit requirements or measurable goals. Please use the format as described in *Municipal Stormwater Program Effectiveness Assessment Guidance* (California Stormwater Quality Association, May 2007).
4. Planned Activities and Changes. This section should describe activities planned for the next year, highlighting any changes made to improve BMPs or program effectiveness.

B. SWPP&MP Category-Specific Content

1. Public education and involvement
 - a. Status of public outreach strategy and outreach activities;
 - b. Status of public education surveys;
 - c. Summary of public involvement activities; and
 - d. Summary of past annual meeting or mandated workshops.
2. Illicit discharge detection and elimination
 - a. Summary of illicit discharges reported and description of how incident was addressed;
 - b. Report on illicit discharge detection and elimination public information or other measures taken; and
 - c. Report on illicit discharge dry screening program results.
3. Stormwater management during construction
 - a. Summary of activities, including number of plans reviewed, total inspections conducted, total number of sites, and enforcement actions taken; and
 - b. Statistics on how NPDES General Permit requirements have been met, in addition to requirements set by the Delaware Sediment and Stormwater Regulations.
4. Post-construction stormwater management
 - a. Summary of number of maintenance inspections conducted by appropriate agency; and
 - b. Total number of BMPs (reported by jurisdiction).
5. Good housekeeping
 - a. Updated inventory of all MS4 facilities owned or operated by permittee;

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- b. Inspection schedule of those MS4 facilities;
 - c. Summary of control measures taken to minimize the impacts of discharges from various sources as listed in permit; and
 - d. Summary of all street sweeping operations, as specified in the SWPP&MP;
 - e. Summary of program to limit infiltration from sanitary sewers into MS4;
 - f. Summary of pesticide, herbicide, and fertilizer program;
 - g. Summary of snow/ice program; and
 - h. Summary of litter control program.
- 6. Industrial storm water
 - a. Updated inventory of industrial facilities;
 - b. Summary of educational materials distributed; and
 - c. Summary of inspections conducted, and any referrals to the Department.
- 7. Mapping
 - a. Summary and update of the storm sewer map;
 - b. BMP data submitted; and
 - c. Updated maps submitted.
- 8. Wet weather monitoring plan
 - a. Summary of monitoring data for storm water and ambient sampling collected during the reporting period; and
 - b. Analysis of the monitoring data, including a comparison to past monitoring data collected (including charts and graphs)
- 9. Summary of annual employee training as required by permit
- C. Fiscal Resources
 - Annual expenditures for the reporting period and anticipated budget for the following reporting period.
- D. SWPP&MP Evaluation and Update
 - 1. Status of program evaluation to be conducted by Year 4
 - 2. Status of any program modifications or updates